

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

WEI YE,)
Petitioner,)
)
v.) C.A. No. 04-11590-
) NG
)
SPENCER,)
Respondent.)

ORDER OF DISMISSAL
October 29, 2004

On September 13, 2004, respondent filed a motion to dismiss [document # 4], asserting that the petition for writ of habeas corpus is time-barred pursuant to the one-year statute of limitations in 28 U.S.C. § 2244(d)(1)(2004). To date, petitioner has not filed an opposition, despite the fourteen-day time limit under the Massachusetts Local Rules. On this basis alone, the above action is dismissed.

However, since the petitioner was pro se when he filed for review to the Supreme Judicial Court of Massachusetts under MASS. GEN. LAWS ch. 211, § 3 -- an action that delayed the filing of the petition at issue here -- I have also reviewed the claim on its merits. I find that such improperly filed review does not toll the statute of limitations under 28 U.S.C. § 2244(d)(1)(2004).

Due to the petitioner's lack of response, and because the petition is time-barred, it is hereby **ORDERED** that the above entitled action is **DISMISSED**.

SO ORDERED.

Dated: October 29, 2004

/s/ Nancy Gertner
NANCY GERTNER, U.S.D.J.